

**BISMARCK PLANNING & ZONING COMMISSION  
MEETING MINUTES  
September 28, 2022**

The Bismarck Planning & Zoning Commission met on September 28, 2022, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5<sup>th</sup> Street. The meeting was held in person and via Zoom. Chair Schwartz presided and was present in the Tom Baker Meeting Room.

Commissioners present were Brian Bitner, Cole Johnson, Vern Laning, Kevin Martin, Gabe Schell, Wendy Van Duyne, Trent Wangen, Paul Zent, and Mike Schmitz.

Commissioner Paul Levchak was absent.

Staff members present were Sarah Fricke – Community Development Senior Administrative Assistant, Jannelle Combs – City Attorney, Ben Ehreth – Community Development Director, Will Hutchings – Senior Planner, Kim Lee – Planning Manager, Daniel Nairn – Senior Planner and Jenny Wollmuth – Senior Planner.

Chair Schwartz called the meeting to order, and Community Development Director Ben Ehreth took roll call.

**MINUTES**

Ms. Lee said staff recommended a condition on the Washington Square special use permit and the action was not included in the motion. It was Commissioners Zent and Bitner's intent to include that condition. Commissioner Laning also noted that his name was misspelled throughout the minutes and was omitted from the last three motions.

**MOTION:** Commissioner Laning made a motion to approve the minutes of the August 24, 2022 meeting, with corrections. Commissioner Van Duyne seconded the motion, and it was unanimously approved with a voice vote.

**CONSIDERATION**

Chair Schwartz called for consideration of the consent agenda.

- 2. ASTER RIDGE SUBDIVISION – ZONING CHANGE AND MAJOR SUBDIVISION PRELIMINARY PLAT**
- 3. BRUNSKILL SUBDIVISION – ZONING CHANGE AND MAJOR SUBDIVISION PRELIMINARY PLAT**

**MOTION:** Based on the findings contained in the staff reports, Commissioner Wangen made a motion to approve consent agenda items 2 and 3, calling for a public hearing on the items as recommended by staff. Commissioner Laning seconded the motion and it was unanimously approved with Commissioners Bitner, Johnson, Laning, Martin, Schell, Schmitz, Schwartz, Van Duyne, Wangen and Zent voting in favor of the motion.

**FINAL CONSIDERATION – ANNEXATION  
PUBLIC HEARING –ZONING CHANGE AND MAJOR SUBDIVISION FINAL PLAT  
DAYBREAK SECOND ADDITION**

Chair Schwartz called for the final consideration of the annexation and a public hearing on the zoning change from the A – Agricultural zoning district to the RT – Residential and CG - Commercial zoning districts and major subdivision final plat for Daybreak Second Addition. The property is located in north Bismarck between 57<sup>th</sup> avenue NE and 71st avenue NE/ ND Highway 1804, along the west side of US Highway 83 (part of Section 9, T139N-R80W/Hay Creek Township) and consist of 125 acres.

Ms. Wollmuth gave an overview of the requests, including the following findings related to land use for the annexation:

1. The City of Bismarck and/or other agencies would be able to provide necessary public services, facilities and programs to serve any development allowed by the annexation at the time the property is developed;
2. The proposed annexation is a logical and contiguous extension of the current corporate limits of the City of Bismarck;
3. The proposed annexation is consistent with the general intent and purpose of the zoning ordinance;
4. The proposed annexation is consistent with the master plan, other adopted plans, policies and accepted planning practice; and
5. The proposed annexation would not adversely affect the public health, safety and general welfare.

She then provided the following findings related to land use for the zoning change:

1. The proposed zoning change generally conforms to the Future Land Use Plan in the 2014 Growth Management Plan, as amended;
2. The proposed zoning change is compatible with adjacent land uses and zoning;
3. The City of Bismarck and/or other agencies would be able to provide necessary public services, facilities and programs to serve any development allowed by the new zoning classification at the time the property is developed;
4. The proposed zoning change is justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map;
5. The zoning change is in the public interest and is not solely for the benefit of a single property owner;
6. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance;

7. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice; and
8. The proposed zoning change would not adversely affect the public health, safety, and general welfare.

She then provided the following findings related to land use for the major subdivision final plat:

1. All technical requirements for approval of a major subdivision final plat have been met;
2. The City Engineer has conditionally approved the Post-Construction Stormwater Management Permit (PCSMP)
3. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance;
4. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice; and
5. The proposed subdivision would not adversely affect the public health, safety and general welfare.

Ms. Wollmuth said, based on these findings, staff recommends approval of the annexation of that portion of the plat not previously annexed; the zoning change from the A – Agricultural zoning district to the RT – Residential and CG – Commercial zoning districts; and the major subdivision final plat for Daybreak Second Addition with the understanding that:

1. A Development Agreement outlining the roles and responsibilities for off-site improvements to US Highway 83 as identified in the Traffic Impact Study must be agreed to by the applicant prior to the City Commission taking final action on the final plat; and
2. An off-site easement for the extension of water services from Yukon Drive south of the proposed plat to the proposed plat, as identified in the utility servicing plan, must be provided to the City Engineer prior to the City Commission taking final action on the final plat.

Chair Schwartz opened the public hearing.

Jason Petryszyn from Swenson Hagen & Co. came forward to explain to the commission the need for secondary access due to a potential large user coming into the project. Two water mains will be added on Yukon and Ridgeland.

Chair Schwartz asked about fulfilling the requirements on the Developers Agreement. Mr. Petryszyn indicated no issues are foreseen.

Commissioner Schell asked for clarification that the second condition added was acceptable to the applicant. Mr. Petryszyn indicated that it was.

There being no further comments, Chair Schwartz closed the public hearing.

**MOTION:** Based on the findings contained in the staff report, Commissioner Bitner made a motion to approve the annexation of that portion of the plat not previously annexed, the zoning change from the A – Agricultural zoning district to the RT – Residential and CG – Commercial zoning districts; and the major subdivision final plat with the understanding that: 1) a Development Agreement outlining the roles and responsibilities for off-site improvements to US Highway 83 as identified in the Traffic Impact Study must be agreed to by the applicant prior to the City Commission taking final action on the final plat; and 2) an off-site easement for the extension of water services from Yukon Drive south of the proposed plat to the proposed plat, as identified in the utility servicing plan, must be provided to the City Engineer prior to the City Commission taking final action on the final plat. Commissioner Laning seconded the motion, and it was unanimously approved with Commissioners Bitner, Johnson, Laning, Martin, Schell, Schmitz, Schwartz, Van Duyn, Wangen and Zent voting in favor of the motion.

#### **PUBLIC HEARING – MAJOR SUBDIVISION FINAL PLAT YEGEN STRIP ADDITION**

Chair Schwartz called for the public hearing on the major subdivision final plat for Yegen Strip Addition. The property is located in east Bismarck along the west side of Yegen Road between Apple Creek Road and Morrison Avenue.

Ms. Lee gave an overview of the request, including the following findings related to land use for the major subdivision final plat:

1. All technical requirements for approval of a major subdivision final plat have been met;
2. The City Engineer has conditionally approved the Post-Construction Stormwater Management Permit (PCSMP)
3. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance;
4. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice; and
5. The proposed subdivision would not adversely affect the public health, safety and general welfare.

Ms. Lee said, based on these findings, staff recommends approval of the major subdivision final plat for Yegen Strip Addition.

Chair Schwartz opened the public hearing.

Mr. Laning asked what would be loaded at the facility.

Greg Feser, Feser Engineering, informed the Commission that the property will be used as a grain loading facility and will not need an easement through any adjacent property for sanitary sewer service at this time.

There being no further comments, Chair Schwartz closed the public hearing.

**MOTION:** Based on the findings contained in the staff report, Commissioner Laning made a motion to approve the major subdivision final plat of Yegen Strip Addition. Commissioner Van Duyne seconded the motion, and it was unanimously approved with Commissioners Bitner, Johnson, Laning, Martin, Schell, Schmitz, Schwartz, Van Duyne, Wangen and Zent voting in favor of the motion

**PUBLIC HEARING – ZONING CHANGE  
LOTS 49 & 50, BLOCK 2, SONNET HEIGHTS SUBDIVISION FIRST REPLAT**

Chair Schwartz called for the public hearing on the zoning change from the R10 – Residential zoning district to the RT – Residential zoning district for Lots 49 and 50, Block 2, Sonnet Heights Subdivision First Replat. The property is located in north Bismarck, west of US Highway 83/State Street, along the north side of East Lasalle Drive.

Ms. Wollmuth gave an overview of the request, including the following findings related to land use for the request:

1. The proposed zoning change is in a developed area of the community and is outside of the Future Land Use Plan in the 2014 Growth Management Plan, as amended;
2. The proposed zoning change is compatible with adjacent land uses and zoning;
3. The City of Bismarck and/or other agencies would be able to provide necessary public services, facilities and programs to serve any development allowed by the new zoning classification at the time the property is developed;
4. The proposed zoning change is justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map;
5. The zoning change is in the public interest and is not solely for the benefit of a single property owner;
6. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance;
7. The proposed zoning change is consistent with the master plan, other adopted plans, policies, and accepted planning practice; and
8. The proposed zoning change would not adversely affect the public health, safety, and general welfare.

Ms. Wollmuth said, based on these findings, staff recommends approval of the zoning change from the R10 – Residential zoning district to the RT – Residential zoning district for Lots 49 and 50, Block 2, Sonnet Heights Subdivision First Replat.

Chair Schwartz opened the public hearing.

Jason Petryszyn, Swenson Hagen & Co., stated the use will be an agriculture commodities business, a low traffic generator as most of their business will be done online.

There being no further comments, Chair Schwartz closed the public hearing.

**MOTION:** Based on the findings contained in the staff report, Commissioner Wangen made a motion to approve the zoning change from the R10 – Residential zoning district to the RT – Residential zoning district for Lots 49 and 50, Block 2, Sonnet Heights Subdivision First Replat. Commissioner Zent seconded the motion, and it was unanimously approved with Commissioners Bitner, Johnson, Laning, Martin, Schell, Schmitz, Schwartz, Van Duyne, Wangen and Zent voting in favor of the motion.

**PUBLIC HEARING – ZONING CHANGE  
LOT 1 AND PART OF LOT 2, BLOCK 1, MEADOW LARK HILL SECOND ADDITION  
REPLAT**

Chair Schwartz called for the public hearing on a zoning change from the RT – Residential and CG – Commercial zoning districts to the CG – Commercial zoning district for Lot 1 and part of Lot 2, Block 1, Meadow Lark Hill Second Addition Replat. The property is located in west-central Bismarck, west of West Divide Avenue and south of Interstate 94, along the west side of Schafer Street.

Ms. Wollmuth gave an overview of the request, including the following findings related to land use for the request:

1. The proposed zoning change is in a developed area of the community and is outside of the Future Land Use Plan in the 2014 Growth Management Plan, as amended;
2. The proposed zoning change is compatible with adjacent land uses and zoning;
3. The City of Bismarck and/or other agencies would be able to provide necessary public services, facilities and programs to serve any development allowed by the new zoning classification at the time the property is developed;
4. The proposed zoning change is justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map;
5. The zoning change is in the public interest and is not solely for the benefit of a single property owner;
6. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance;

7. The proposed zoning change is consistent with the master plan, other adopted plans, policies, and accepted planning practice; and
8. The proposed zoning change would not adversely affect the public health, safety, and general welfare.

Ms. Wollmuth said, based on these findings, staff recommends approval of the zoning change from the RT – Residential and CG – Commercial zoning districts to the CG – Commercial zoning district for Lot 1 and part of Lot 2, Block 2, Meadow Lark Hill Second Addition Replat.

Chair Schwartz opened the public hearing.

There being no comments, Chair Schwartz closed the public hearing.

**MOTION:** Based on the findings contained in the staff report, Commissioner Laning made a motion to approve the zoning change from the RT – Residential and CG – Commercial zoning districts to the CG – Commercial zoning district for Lot 1 and part of Lot 2, Block 1, Meadow Lark Hill Second Addition Replat. Commissioner Johnson seconded the motion, and it was unanimously approved with Commissioners Bitner, Johnson, Laning, Martin, Schell, Schmitz, Schwartz, Van Duyne, Wangen and Zent voting in favor of the motion.

#### **PUBLIC HEARING – SPECIAL USE PERMIT LOTS 1 AND 2, BLOCK 1, SONNET HEIGHTS SUBDIVISION 5<sup>TH</sup> REPLAT**

Chair Schwartz called for the public hearing for a special use permit to allow the operation of a child care center on Lots 1 and 2, Block 1, Sonnet Heights Subdivision 5<sup>th</sup> Replat. The property is located in north Bismarck, north of 43<sup>rd</sup> Avenue NE along the west side of Ottawa Street (4700 Ottawa Street).

Mr. Hutchings gave an overview of the request, including the following findings related to the request:

1. The proposed special use complies with all applicable provisions of the zoning ordinance and is consistent with the general intent and purpose of the zoning ordinance;
2. The proposed special use is compatible with adjacent land uses and zoning;
3. The proposed special use would be designed, constructed, operated and maintained in a manner that is compatible with the appearance of the existing or intended character of the surrounding area;
4. Adequate public facilities and services are in place or would be provided at the time of development;
5. The proposed special use would not cause a negative cumulative effect, when considered in conjunction with other uses in the immediate vicinity;



6. Adequate measures have been or would be taken to minimize traffic congestion in the public streets and to provide for appropriate on-site circulation of traffic;
7. The proposed special use is consistent with the master plan, other adopted plans, policies, and accepted planning practice; and
8. The proposed special use would not adversely affect the public health, safety, and general welfare.

Mr. Hutchings said, based on the findings contained in the staff report, staff recommends approval of the special use permit to allow operation of a child care center on Lots 1 and 2, Block 1, Sonnet Heights Subdivision 5<sup>th</sup> Replat with the following conditions:

1. The required outdoor recreation area fence must be installed prior to occupation.
2. Development of the site and operations of the childcare center must generally conform to the material provided with the application.

Chair Schwartz opened the public hearing.

Darrel and Colleen Bergen indicated that they had nothing to add and thanked the Commission for consideration of their request.

There being no further comments, Chair Schwartz closed the public hearing.

**MOTION:** Based on the findings contained in the staff report, Commissioner Wangen made a motion to approve the special use permit to allow the operation of a child care center on Lots 1 and 2, Block 1, Sonnet Heights Subdivision 5<sup>th</sup> Replat with the following conditions: 1) the required outdoor recreation area fence must be installed prior to occupation; and 2) development of the site and operations of the childcare center must generally conform to the material provided with the application. Commissioner Zent seconded the motion, and it was unanimously approved with Commissioners Bitner, Johnson, Laning, Martin, Schell, Schmitz, Schwartz, Van Duyne, Wangen and Zent voting in favor of the motion.

#### **PUBLIC HEARING – SPECIAL USE PERMIT LOT 2, BLOCK 1, WOLF SUBDIVISION**

Chair Schwartz called for the public hearing for a special use permit to increase the total allowable area of accessory buildings to 3,200 square feet on Lot 2, Block 1, Wolf Subdivision. The property is located southeast of Bismarck, south of 55<sup>th</sup> Avenue SE and west of 66<sup>th</sup> Street SE (6415 55<sup>th</sup> Avenue SE).

Mr. Hutchings gave an overview of the request, including the following findings related to the request:

1. The proposed special use complies with all applicable provisions of the zoning ordinance and is consistent with the general intent and purpose of the zoning ordinance;



2. The proposed special use is compatible with adjacent land uses and zoning;
3. Apple Creek Township Board of Supervisors has not yet provided a recommendation for the proposed special use;
4. The proposed special use would be designed, constructed, operated and maintained in a manner that is compatible with the appearance of the existing or intended character of the surrounding area;
5. Adequate public facilities and services are in place or would be provided at the time of development;
6. The proposed special use would not cause a negative cumulative effect, when considered in conjunction with other uses in the immediate vicinity;
7. Adequate measures have been or would be taken to minimize traffic congestion in the public streets and to provide for appropriate on-site circulation of traffic;
8. The proposed special use is consistent with the master plan, other adopted plans, policies and accepted planning practice; and
9. The proposed special use would not adversely affect the public health, safety and general welfare.

Mr. Hutchings said, based on these findings, staff recommends approval of the special use permit to increase the area of accessory buildings to 3,200 square feet on Lot 2, Block 1, Wolf Subdivision.

Commissioner Laning asked if the owner is aware of the setback requirements, as the application reflected the location of the building may vary. Mr. Hutchings responded that the applicant has been informed of the requirements and the digitized map allows some flexibility.

Chairman Schwartz questioned a square on the location map attachment. The owner stated it is a concrete slab and not a structure.

Chair Schwartz opened the public hearing.

Monte Sicble came forward and stated Apple Creek Township does not find any reason not to approve the request, but wants to go on record stating they would like some of the wordage changed from special use because it has a different meaning in the township's rules.

There being no further comments, Chair Schwartz closed the public hearing.

**MOTION:** Based on the findings contained in the staff report, Commissioner Bitner made a motion to approve the special use permit to increase the total allowable area of accessory buildings to 3,200 square feet on Lot 2, Block 1, Wolf Subdivision. Commissioner Zent seconded the motion, and it was unanimously approved with Commissioners Bitner, Johnson, Laning, Martin,

Schell, Schmitz, Schwartz, Van Duyne, Wangen and Zent voting in favor of the motion.

## **OTHER BUSINESS**

Mr. Ehreth introduced Sarah Fricke as Community Development's new Senior Administrative Assistant. He also noted that Senior Planner Will Hutchings will be departing his position.

The Commissioners welcomed Ms. Fricke and thanked Mr. Hutchings for his contributions to the organization.

## **UPDATE OF TOGETHER 2045**

Mr. Nairn updated the Commission on the status of the Together 2045 planning process. The final draft was brought to the Advisory Committee and revisions will be made based on their comments. An updated draft will be included with the October agenda to the Planning and Zoning Commission for consideration and then the public hearing is tentatively scheduled for the November meeting. Commissioner Johnson stated he was hearing positive feedback in the community. The final draft will be available to the public the same time the Planning and Zoning Commission receives it.

## **ADJOURNMENT**

There being no further business, Chair Schwartz declared the Bismarck Planning & Zoning Commission adjourned at 5:53 p.m. to meet again on October 26, 2022.

Respectfully submitted,

  
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Sarah S. Fricke  
Recording Secretary

  
\_\_\_\_\_  
Mike Schwartz  
Chairman

Sept 28

**\*\*Please print\*\***

[illegible]

**Sarah Fricke**

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**From:** Planning - General Mailbox  
**Sent:** Wednesday, September 28, 2022 10:33 AM  
**To:** Sarah Fricke  
**Subject:** FW: Zoning Change - Lot 49 and 50 Sonnet Heights

-----Original Message-----

**From:** [REDACTED]  
**Sent:** Wednesday, September 28, 2022 7:19 AM  
**To:** Planning - General Mailbox <planning@bismarcknd.gov>  
**Subject:** Zoning Change - Lot 49 and 50 Sonnet Heights

CAUTION: \*\*\*External Email - Use caution clicking links or opening attachments\*\*\*

To Whom It May Concern,

I would like to provide my comments about the potential zoning change to Lots 49 and 50, Block 2, Sonnet Heights Subdivision First Replat. I am against the changing of zones. I live very closely to the lots and hope to keep them R10 residential. I would like to keep this neighborhood family friendly. By re-zoning to offices and multi-family units, it would add more traffic to LaSalle, creating a higher risk for neighborhood kids. By keeping the lots residential, you have future lot owners that are invested in the appearance and value of the property. With multi-family units, there is a higher risk of conflict creating more disturbance to the neighborhood. This would prohibit families from wanting to move to the neighborhood.

In closing, I would like to keep Sonnet Heights a family friendly, residential community. LaSalle Dr. is busy enough already. We don't need to add more apartments, condos, or offices to the area. Please keep the lots R10 zoned.

Thank you.

Drew Larson

Sent from my iPad

**Sarah Fricke**

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**From:** Planning - General Mailbox  
**Sent:** Wednesday, September 21, 2022 6:45 PM  
**To:** Sarah Fricke; Daniel Nairn; Jenny Wollmuth; Kim Lee; William Hutchings  
**Subject:** FW: 6415 55th Ave SE Bismarck ND

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**From:** Jodi Schmidt <[REDACTED]>  
**Sent:** Wednesday, September 21, 2022 3:36 PM  
**To:** Planning - General Mailbox <planning@bismarcknd.gov>  
**Subject:** 6415 55th Ave SE Bismarck ND

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Hello,

We are writing to let Bismarck Planning and Zoning Commission know we are in favor of Daniel and Nicole Lyons plans for their shop. My husband and I live next door to Lyons and have no opposition to the size of outbuilding they are requesting.

Please let me know if you have any questions for us.

Donnie & Jodi Schmidt  
6515 55<sup>th</sup> Ave SE  
Bismarck ND 58504